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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st March 2007

No. 2073-II/1(BH)-81/2000-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th December 2006 in Industrial Disputes Case No. 10 of 2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s Utkal Synthetics (P) Ltd., Charampa, Dist. Bhadrak and their workmen represented through Utkal Synthetics Workers' Union, Charampa, Bhadrak was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 10 OF 2001

Dated the 28th December 2006

Present :

Sk. Jan.Hossain, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

The Management of M/s Utkal
Synthetics (P) Ltd., Charampa
Dist. Bhadrak.

.. First Party—Management

And

Their Workmen represented
by Utkal Synthetics Workers' Union,
Charampa, Bhadrak.

.. Second Party—Workmen

Appearances :

For the First Party—Management	Shri J. P. Bhattacharjee Representative of the Management
For the Second Party—Workmen	Shri Basanta Ku. Panda Representative of the Union

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Letter No. 9954—li-1-BH-81-2k-LE., dated the 12th July 2001.

"Whether the action of the management of M/s Utkal Synthetics (P) Ltd., Charampa, Bhadrak in terminating the services of the workmen as in the schedule with effect from the 1st June 2000 in the grab of closure is legal and/or justified ? If not, to what relief they are entitled ?"

2. The brief facts of the case are—

The workmen are represented by a registered union in the name of Utkal Synthetics Workers' Union. Accordingly, notice was issued to the General Secretary of the Union who on receipt of the notice appeared and filed the claim statement. It is stated that 60 numbers of regular employees and 12 numbers of casual workers were working under the first party management. The management without any reason or rhyme closed the industry with effect from the 1st June 2000 without following the procedure laid down in the Industrial Disputes Act (hereinafter referred to as the 'Act'). No closure compensation was given to them. It is further stated that the management called the workmen to its Calcutta Office, tortured them by paying nominal amount and obtained their signatures in unwritten papers. During conciliation proceeding the District Labour Officer, Bhadrak could detect the contravention of the management and filed prosecution under Section 25-FF-A and Section 15 of the payment of Wages Act in the Court of the S.D.J.M., Bhadrak. The cases were registered as 2 (C) C. C. 49 of the 2000 and 2(C) C.C. 50 of 2000 and are now *sub judice*. It is prayed to make payment to the workmen of their arrear dues, compensation and to provide them service.

3. The management in its written statement challenged the maintainability of the proceeding. According to it, during pendency of the proceeding a settlement in the prescribed form has been submitted stating therein that the existing disputes between the parties have been mutually settled and the workmen have received their legal dues consequent upon the closure of the industry except Shri K. K. Nayak, who did not receive his dues. It is contended that the Labour Officer-cum-Conciliation Officer, Bhadrak submitted a failure report indicating therein the names of 72 workmen. There were only 18 numbers of workmen in the Muster Roll

of the Industry threw. All the workmen had resigned prior to that date and received all their dues from the management. It denied the contents of Para. 3 of the claim statement. According to it, the memorandum of settlement was prepared at Charampa in presence of all the 18 workmen including their General Secretary and the payment was made in presence of the Officer-in-charge of Bhadrak Rural Police Station who was then handling the law and order situation. It also denied its earning profit in the year 1999-2000. The decision of the management in respect of closure was neither arbitrary nor illegal. This is a small scale industry and incurred losses. Most of the workers voluntarily resigned and received their financial benefits. The present reference is otherwise bad in law and also liable to be dismissed.

4. On the basis of the pleadings, the issue as given below has been framed for consideration :—

ISSUE

"Whether the action of the management of M/s Utkal Synthetics (P) Ltd., Charampa, Bhadrak in terminating the services of the workmen as in the schedule with effect from the 1st June 2000 in the grab of closure is legal and or justified ? If not, to what relief they are entitled ?"

5. At the time of hearing four witnesses were examined from the side of the workmen. No documentary evidence was lot in by the Union. On behalf of the management one witness was examined and it got marked Exts. A to D, D/1, AA, BB, A/1 to Z/1, AA/1 to BB/1 and CC.

6. Though the management contends that the claim made by the workmen is false, the fact remains that the claim is contested by the management by filing counter. The papers available on record discloses that the evidence is lot in by the parties in support of their respective cases. It is important to refer the evidence of the witnesses.

W. W. No. 1, Shri Sanatan Kar, in his evidence has stated that he joined as a Fitter in Utkal Synthetics Ltd., Charampa, Bhadrak in the year 1985 and worked up to the 1st January 2000. The factory was closed on the 1st June 2000. This fact was brought to the notice of the District Labour Officer but it yielded no result. So they gave 'Dharana' for two months and blocked the road. They also gheroued the office of the District Labour Officer, who filed prosecution which are *sub judice* in Bhadrak Court. After some days the workers were called by the management for settlement at Calcutta. There the management took their signatures in blank papers and also gave threat with dire consequences. In cross-examination though he denied the suggestions that he resigned from the job on the 28th April 2000 and received the whole amount; that his resignation was accepted on the 30th April 2000; that he lent signature acknowledging receipt of the payment; that he received Rs. 3027 towards bonus; Rs. 275 towards leave salary; Rs. 23, 841 towards gratuity from the management but admitted his signatures marked as Exts. A, B, C, D and E in form No. 1. He also denied the suggestion that he gave in writing that no due was with the management and his claim for salary for the month of May was illegal. Admittedly, he has not reported the aforesaid facts to the Police or to any competent authority. According to him, Shri Lokanath Sarangi was the Secretary of the Union at the relevant time and he brought this fact to his notice.

W. W. No. 2, Shri Akshaya Sahani has said that he started working as a labourer in the management from the year 1983. As the factory was closed he was removed from the job without making payment. He has also said that he went to the Calcutta Office to meet the owner. There he demanded money towards his wages. When the owner refused to give money and threatened to assault them, they came away. The witness also denied the suggestion that he tendered resignation on the 26th April 2000; and the same was accepted on the 30th June 2000. Though he admitted his signatures Exts. F and G but contended that his signatures were obtained in blank papers. He denied to have received any amount from the owner and acknowledged the receipt of the amount. The witness proved his signatures marked as Exts. H, J, K & L on further cross-examination he has said that he reported about the high-handed action of the owner at Bhadrak P.S. and also the Union. It was suggested to him that he tendered resignation after receiving all his dues and gave no due certificate which he denied.

W. W. No. 3, Shri Damodar Sahani in his evidence has stated that joined as a labourer and then as a Helper in Utkal Synthetics Ltd. which was closed on the 1st June 2000. He worked there for a period of 14 years. On their petition the owner was noticed but no settlement could be arrived at. Being called by the owner they went to Calcutta where the owner took their signatures in ten to twelve blank papers and gave him Rs. 100 to Rs. 200. It was suggested to him in cross-examination that (i) he tendered resignation on the 28th April 2000 i.e. before closure of the factory; (ii) his resignation was accepted on the 30th April 2000; (iii) he received all his dues at Bhadrak office; (iv) he granted no due certificate to the management; and (v) he received the gratuity money in full, which he denied though he admitted his signatures Exts. M, N, P, Q, R and S. According to him, he went to Calcutta along with Sanatan Kar, Akshaya Sahani, Amulya Das, Kali Charan Hansda and Basant Panda. He is unable to recollect if the aforesaid facts were brought to the notice of the Labour Officer or the Union Secretary. He is also unable to say who received how much amount. The witness was frank enough to admit that they had not reported the high-handed action of the owner at the Police Station.

W. W. No. 4, Shri Muralidhar Barik has said that he joined as a labourer in Utkal Synthetics Ltd. in the year 1985 and worked up to May 2000. It was closed with effect from the 1st June 2000 and no payment was made. His wage was Rs. 2,200 per month. He has further said that the owner of the Factory called them to Calcutta to settle the matter and to make payment but without making payment he obtained their signatures in blank papers. In cross-examination it was suggested to the witness that—(i) he took voluntary retirement on the 29th April 2000; (ii) his application for voluntary retirement was accepted on the 30th April 2000; (iii) he received bonus of Rs. 2,648, Rs. 457 towards E.L., Rs. 18,488 towards gratuity money (totalling Rs. 21,593) on the 30th April 2000 and granted receipt; (iv) he gave no due certificate to the company; and (v) he applied to the authorities for gratuity money on the 30th April 2000, which he denied but he proved his signatures marked as Exts. T, U, W, X and AA. On further cross-examination he was unable to give the date of his visit to Calcutta. He has admitted that no report with regard to the action of the owner was made at the Police Station or any case was filed in the Court of law. The witness proved the signature of Shri Lokanath Sarangi, the Secretary of the Union marked as Exts. BB.

The workmen have not produced any cogent material in support of their assertion that the owner had obtained their signatures on blank papers. It is their statement in their favour and that cannot be regarded that the owner had in fact acted in this manner. The case of the workmen that they did not report the matter at the Police Station or taken action in the Court of law, I am yet to understand what prevented the workmen to take action against the alleged high-handed action of the owner.

M.W. No. 1, Shri J. Bhattacharjee is the Director of Utkal Synthetics Ltd. His evidence is that Utkal Synthetics Ltd. was closed on the 1st June 2000 and at that time 18 employees were working. Two months prior to the closure of the company the employees who were working there had received their dues. The workmen had received their dues as they tendered resignation from their job. The amounts due to them were paid, they acknowledged the receipt of the dues and granted no due certificates. The witness proved the resignation letter of Sanatan Kar marked as Ext. A/1, the acceptance letter Ext. B/1, signature of the Managing Director, Ext. B/2, the statement showing the full and final payment, Ext. C/1, signatures of the witnesses, namely, Madhusudan Barik & Damodar Barik, Exts. C/2 and C/3 respectively, Ext. D/2 is the form claiming gratuity money and Ext. D/3 is the acknowledgement given by the workman after receiving the gratuity money, signature of the Managing Director, Ext. D/1 and the no due certificate, Ext. E/1 given by the workman Sanatan Kar. In respect of the workman Shri Akshaya Kumar Sahani, the witness has proved Ext. F/1, the letter of resignation of the workman, Ext. G/1 is the acceptance letter, Ext. G/2 is the signature of the Managing Director, Ext. H/1 is the statement showing full and final payment, Ext. H/2, Ext. H/3 are the signatures of the witnesses, namely, Gagan Kumar Barik and Umesh Chandra Das respectively, Ext. J/1, the no due certificate furnished by the workman, Ext. K/1, the form claiming gratuity by the workman and Ext. L/1, the acknowledgement given by the workman on receiving the gratuity money. Similarly, in respect of workman Shri Damodar Sahani, M.W. No. 1 has proved Ext. M/1, the resignation letter tendered by the workman, Ext. N/1, the acceptance letter of the management, Ext. N/2, the signature of the Managing Director, Ext. P/1, the no due certificate given by the workman, Ext. Q/1, the receipt granted by the workman on receiving full and final payment, Ext. Q/2 and Ext. Q/3 are the signatures of the witnesses, namely, M.D. Barik and Sanatan Kar respectively, Ext. R/1 the form claiming gratuity by the workman, Ext. S/1, the acceptance form given by the workman on receiving the gratuity and Ext. S/2, the signature of the Managing Director. In respect of the workman Muralidhar Barik, the witness has proved Ext. T/1, the resignation letter tendered by the workman, Ext. U/1, the acceptance letter of the management, Ext. U/2, the signature of the Managing Director Ext. W/1, the no due certificate granted by the workman Ext. V/1, the statement showing the full and final payment made to the workman, Exts. V/2 and V/3 are the signatures of the witnesses, namely, Damodar Sahani and Sanatan Kar respectively, Ext. Z/1, the form applying gratuity by the workman, Ext. AA/1, the gratuity money acceptance form and Ext. AA/2, the signature of the Managing Director. His evidence also is that Shri Lokanath Sarangi was the Secretary of the Union functioning in the industry. Further, his evidence is that after making all the payment the management and the Union filed a settlement paper, Ext. BB/1 in this Tribunal. The witness proved the joint petition marked as Ext. CC. for such settlement. The industry was closed in accordance with law. In cross-examination he has said that the closure of the factory was

intimated to different authorities and also to the Union. The witness denied the suggestion that by the date of closure 72 workers and 48 contract labourers were working and that the workers have not received their dues. There is no reason to disbelieve his statement made to the effect that the workers gave resignation prior to the closure of the factory and they received their dues due to them. The workman Sanatan Kar and Damodar Sahani tendered their resignation on the 28th April 2000 and it was accepted on the 30th June 2000, Muralidhar Barik retired voluntarily on the 29th April 2000. It is well settled principle of law that once the resignation is accepted, there is no jural relationship between the employer and the employee and the employee cannot claim reinstatement in the post. The workmen concerned have accepted all benefits and dues. The papers showing receipt of their dues are available on record. In my view, therefore, such act on the part of the workmen is hit by the principle of *ostoppel*. The workmen concerned were no longer workmen. The phrase 'industrial dispute' has been defined in Section 2(k) of the Act, which is quoted hereunder :—

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person ;"

7. It is thus clear that on the date of making the reference none of the persons could be termed to be 'workmen'. As the reference stands, the workmen were terminated from service with effect from the 1st June 2000 in the grab of closure. As said in the foregoing paragraphs that the workmen tendered resignation from their jobs and their resignation were accepted, in the circumstance, therefore, the question of terminating their services in the grab of closure does not arise. Hence, the workmen are not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN
28-12-2006
Presiding Officer
Industrial Tribunal, Bhubaneswar

Sk. JAN HOSSAIN
28-12-2006
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government